

PROJECT AGREEMENT  
BETWEEN  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND PHELPS DODGE CORPORATION

The United States Environmental Protection Agency (U.S. EPA), represented by the Great Lakes National Program Office (GLNPO), the State of Michigan, represented by the Department of Environmental Quality (MDEQ), and Phelps Dodge Corporation (the Non-Federal Sponsor) (referred to hereinafter collectively as the Parties or individually as Party) are entering into this Project Agreement (this Agreement) to construct the Tannery Bay Sediment Remediation and Restoration Project.

The Tannery Bay Sediment Remediation and Restoration Project, as defined in Paragraph 1.h of this Agreement, is a qualified project under the Great Lakes Legacy Act of 2002, codified as amended at 33 U.S.C. § 1268(c) P.L. 107-303 *et seq* (GLLA). This Project to remediate sediments is to be carried out within the St. Mary's River Area of Concern (AOC), which is wholly or partially within the United States. U.S. EPA has determined that the Project area is not likely to suffer significant further or renewed contamination from existing sources of pollutants following the completion of the Project.

The GLLA at 33 U.S.C. § 1268(c)(12)(E) and (F) specifies the cost sharing requirements applicable to the Project. These requirements include, but are not limited to: maintaining aggregate expenditures in the AOC where the Project is located, requiring the Non-Federal Sponsor to maintain its aggregate expenditures from all other sources for remediation programs in the AOC where the Project is located, and requiring the Non-Federal Sponsor to enter into a written agreement to furnish its required cooperation for the Project or Project element.

GLNPO, MDEQ and the Non-Federal Sponsor have the authority and capability to perform as set forth in this Agreement and intend to cooperate in cost-sharing and financing of the Project according to the terms of this Agreement.

GLNPO, MDEQ and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a "partnering" strategy and a working relationship through a mutually developed formal strategy of commitment and communication which creates an environment where trust and team work prevent disputes, foster a cooperative bond, and facilitate completion of a successful Project.

NOW, THEREFORE, GLNPO MDEQ and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

1. For purposes of this Agreement:

- a. "Article" means a portion of this Agreement identified by roman numeral.
- b. "Fiscal year" means one fiscal year for GLNPO. The GLNPO fiscal year begins on October 1 and ends on September 30.
- c. "GLLA" means the Great Lakes Legacy Act of 2002, as amended and codified at 33 U.S.C. § 1268(c), P.L. 107-303, Section 101, *et seq.*
- d. "In-kind contributions" means the value, as established by GLNPO, of Project related goods and services provided by the Non-Federal Sponsor including, but not limited to: lands, labor provided by the Non-Federal Sponsor employees, contractors or consultants, construction of Project elements, construction materials, equipment, design or engineering services, construction oversight, and post-construction confirmation sampling and laboratory services.
- e. "MDEQ" means the Michigan Department of Environmental Quality. Only those portions of this Agreement that specifically reference the MDEQ apply to the MDEQ.
- f. "Non-Federal Sponsor's share" means the ratio of the Non-Federal Sponsor's total cash and/or In-kind contributions required according to Paragraphs 5 and 19 of this Agreement to total financial obligations for the Project, as projected by GLNPO, and shall be deemed to include \$600,000 to be contributed to the project by MDEQ. For purposes of this Agreement, the Non-Federal Sponsor's share shall be 40% of the Total Project Costs.
- g. "Paragraph" means a portion of this Agreement identified by arabic numeral.
- h. "Project" means the work set forth in the Work Plan, which is attached hereto as Exhibit A and incorporated by reference, and which generally consists of 1) dredging of approximately 40,000 cubic yards of contaminated sediments from Tannery Bay, which is located along the south shore of the St. Mary's River upstream of the City of Sault Ste. Marie, Michigan, in the Saint Mary's Area of Concern; 2) excavation of approximately 750 cubic yards of affected soil in a nearshore wetland area which has elevated levels of mercury, and which could be a source of further contamination of the sediment; 3) dewatering of dredged and excavated materials, as necessary prior to off-site disposal; 4) disposal of dredged and excavated materials; 5) additional site management that will include restoration of the nearshore area; and 6) post construction sampling. Additional details are set forth in the attached Work Plan.
- i. "Project Period" means the time from the date GLNPO first notifies MDEQ and the Non-Federal Sponsor in writing of the commencement of the Project construction using GLNPO's contractors to the date that the GLNPO Project Manager notifies the MDEQ and the Non-Federal Sponsor in writing of GLNPO's determination that the Project is complete.
- j. "Total Project Costs" means all costs incurred by the Non-Federal Sponsor and

GLNPO according to this Agreement that are directly related to the Project's construction and post-construction confirmation sampling. Subject to this Agreement, the term includes, but is not limited to: the value of the Non-Federal Sponsor's In-kind contributions; the Non-Federal Sponsor's or GLNPO's engineering and design costs during the Project; actual Project costs including oversight; the cost of post-construction confirmation sampling; GLNPO's supervision and administration costs; GLNPO's costs of contract dispute settlements or awards; and audit costs pursuant to Paragraphs 30 and 31 of this Agreement. This term does not include any operation and maintenance activities following completion of the Project.

## ARTICLE II - OBLIGATIONS OF GLNPO AND THE NON-FEDERAL SPONSOR

2. Subject to: 1) GLNPO receiving funds appropriated by the United States Congress; 2) the MDEQ and the Non-Federal Sponsor providing funds and/or in-kind contributions to the Project; 3) MDEQ receiving funds appropriated by the Michigan Legislature; 4) U.S. EPA's contractor or the Non-Federal Sponsor's contractor obtaining necessary permits required by State of Michigan code or statutes; and 5) the landfill that is to be used for disposal of dredge materials obtaining the solid waste licenses that are required under state law, GLNPO shall conduct the Project, pursuant to all federal laws, regulations, and policies.

3. a. Throughout the Project Period, the GLNPO Project Coordinator, MDEQ and the Non-Federal Sponsor shall arrange to have the U.S. EPA contractor, and the contractors of the Non-Federal Sponsor, furnish each Party with monthly progress reports.

b. Notwithstanding Paragraph 2 of this Agreement, if the award of any contract for constructing the Project would result in Total Project Costs exceeding \$ 8,000,000, GLNPO and the Non-Federal Sponsor shall defer award of that contract and all subsequent contracts for Project construction until they agree to proceed with further contract awards, but in no event shall the contract awards be deferred for more than 9 months. Notwithstanding this general provision for deferring contract awards, GLNPO, after signing an amendment to this Agreement that has been negotiated in good faith with the Non-Federal Sponsor to increase the Total Project cost limit in this Paragraph, may award a contract or contracts after the Director of GLNPO determines in writing that the award of the contract or contracts must proceed to comply with law or to protect human life or property from imminent and substantial harm at the prescribed cost share.

4. The Non-Federal Sponsor, and MDEQ shall provide information to GLNPO or the U.S. EPA contractor for the following purposes:

a. Financial or technical information needed for the U.S. EPA contractor to produce monthly reports,

b. Financial records to demonstrate payment of the Non-Federal Sponsor share of

the Total Project Costs, and

c. Financial and technical information to demonstrate maintenance of effort within the AOC.

d.. The financial management systems of the Non-Federal Sponsor must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of project agreement activities must be made according to the financial reporting requirements of this Agreement.

(2) Accounting records. The Non-Federal Sponsor must maintain records which adequately identify the source and application of funds provided for project agreement activities. These records must contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all project Agreement cash, real and personal property, and other assets. The Non-Federal Sponsor must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. For each project Agreement, the Non-Federal Sponsor must compare actual expenditures or outlays with budgeted amounts. Financial information must be related to performance or productivity data, including developing unit cost information whenever appropriate or specifically required in the project Agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. OMB cost Circular A-87 and the terms of this Agreement will govern in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. The Non-Federal Sponsors accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract award documents, etc.

5. MDEQ and the Non-Federal Sponsor shall make contributions to the Total Project Costs as follows:

a. MDEQ, subject to receiving funds appropriated by the Michigan Legislature, shall contribute a fixed amount of \$600,000 to the Project costs in accordance with Paragraph 18 below.

b. GLNPO will project, based on the information provided by the Non-Federal Sponsor and other sources, the Total Project Costs.

c. GLNPO will project the value of the In-kind contributions provided by the Non-Federal Sponsor as specified in Paragraph 19 of this Agreement.

d. GLNPO has determined that the value of the non-Federal Sponsor's projected In-kind contributions is less than 40% of the Total Project Costs. The difference between the Non-Federal Sponsor's 40% share of the Total Project Costs which includes the \$600,000 paid by MDEQ and the value of its In-kind contributions shall be paid by the Non-Federal Sponsor to GLNPO as specified in Paragraph 19, in the amount necessary to make its total contribution equal to 40 percent of Total Project Costs. The Non-Federal Sponsor's total cost share combined with the \$600,000 from MDEQ shall not exceed \$3,200,000 unless the Total Project Cost is increased pursuant to an Amendment to this Project Agreement effectuated by GLNPO and the Non-Federal Sponsor consistent with Paragraph 3.b. or 20 of this Agreement

6. GLNPO shall perform a final accounting according to Paragraph 22 of this Agreement, to determine the value of the Non-Federal Sponsor's In-kind contributions under this Agreement to determine whether the Non-Federal Sponsor has met its obligations under the GLLA and this Agreement.

7. The Non-Federal Sponsor shall not use federal program funds to meet any of its obligations for the Project under this Agreement. The Non-Federal Sponsor must make a one-time demonstration at the signing of this Agreement that it will maintain its aggregate expenditures from all other sources for remediation programs in the AOC in which the Project is located at or above the average level of such expenditures in the two fiscal years preceding the date of Project initiation

8. The Non-Federal Sponsor certifies that the Non-Federal Sponsor and, to its knowledge, any of its contractors who will execute work under this Agreement:

a. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local ("public") transactions;

b. Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Paragraph 8.b;

d. Have not within the preceding three years had a public transaction terminated for cause or default; and

e. Will insure that projects involving collection of environmental data (measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology) must meet the American National Standard Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs, ANSI/ASQC E4-1004. "Quality System Documentation" includes a Quality Management Plan (QMP), a Quality Assurance Project Plan (QAPP), or such other documentation which demonstrates compliance with ANSI/ASQC E4-1994.

### ARTICLE III - LANDS, EASEMENTS, AND PUBLIC LAW 91-646 COMPLIANCE

9. GLNPO, after consulting with the Non-Federal Sponsor, shall determine the lands, easements, or rights-of-way necessary for conducting the Project, including those necessary for the disposal of dredged or excavated material, or relocations, and those lands, easements, or rights-of-way that are subject to the navigation servitude. Before construction ends, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way necessary for the construction, as set forth in the Work Plan. Furthermore, before issuing the solicitation for each contract for constructing or operating and maintaining the Project, or before GLNPO incurs any financial obligation for constructing the Project if it elects to perform with its contractors, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way that GLNPO determines the Non-Federal Sponsor must provide for that work, and shall authorize GLNPO to enter the lands, easements, or rights-of-way.

10. Until GLNPO furnishes the Non-Federal Sponsor with the results of the final accounting pursuant to Paragraph 22, the Non-Federal Sponsor, in a timely manner, shall provide GLNPO the documents that are necessary for it to determine the value of any contribution provided pursuant to Paragraph 9. Upon receipt of these documents, GLNPO shall afford credit for the value of the contribution according to Paragraph 5.

11. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations at 49 C.F.R. Part 24, in acquiring lands, easements, or rights-of-way necessary for constructing or operating and maintaining the Project, including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with the Act.

### ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

12. The Non-Federal Sponsor shall receive credit towards its total contribution according to Paragraph 5 for the value of the lands, easements, or rights-of-way that it provides pursuant to Article III. However, the Non-Federal Sponsor shall not receive credit for the value of any

lands, easements, or rights-of-way that it provided previously for another federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, or rights-of-way that were acquired or provided using federal program funds.

13. For the sole purpose of affording credit according to this Agreement, the value of lands, easements, and rights-of-way, including those necessary for the borrowing of material, or the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined according to this Paragraph.

a. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of the real property interests on the date the Non-Federal Sponsor authorizes GLNPO to enter the property. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of the real property interests at the time the interests are acquired.

b. General Valuation Procedure. Except as provided in Paragraph 13.c, or 13.d, the fair market value of lands, easements, or rights-of-way shall be determined according to Paragraph 13.b.i, unless a different amount is determined later to represent fair market value according to Paragraph 13.b.ii.

i. The Non-Federal Sponsor shall obtain, for that real property interest, an appraisal prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and GLNPO. The appraisal shall be prepared according to the applicable rules of just compensation, as specified by GLNPO. The fair market value shall be the amount in the Non-Federal Sponsor's appraisal, if GLNPO approves the appraisal. If GLNPO does not approve the Non-Federal Sponsor's appraisal, GLNPO may obtain an appraisal, and the fair market value shall be the amount in GLNPO's appraisal, if the Non-Federal Sponsor approves the appraisal. If the Non-Federal Sponsor does not approve GLNPO's appraisal, GLNPO, after consultation with the Non-Federal Sponsor, shall consider both Parties' appraisals and shall determine the fair market value based on both appraisals.

ii. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to Paragraph 13.b.i, GLNPO, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consulting with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to Paragraph 13.b.i, but not to exceed the amount actually paid or proposed to be paid. If GLNPO approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to Paragraph 13.b.i.

c. Waiver of Appraisal. Except as required by Paragraph 13.d, GLNPO may

waive the requirement for an appraisal to determine the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, GLNPO and the Non-Federal Sponsor must agree in writing to the value of the real property interest in an amount not to exceed \$10,000.

d. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit to GLNPO, prior to instituting the proceedings, a written notice of its intent to institute the proceedings and an appraisal of the specific real property interests to be acquired in the proceedings. GLNPO shall have 60 days after receipt of the notice and appraisal to review the appraisal, if not previously approved by GLNPO in writing.

i. If GLNPO previously has approved the appraisal in writing, or if GLNPO provides written approval of, or takes no action on, the appraisal within the 60-day period, the Non-Federal Sponsor shall use the amount in the appraisal as the estimate of just compensation in instituting the eminent domain proceeding.

ii. If GLNPO provides written disapproval of the appraisal, including the reasons for disapproval, within the 60-day period, GLNPO and the Non-Federal Sponsor shall consult in good faith to resolve promptly the issues or areas of disagreement identified in GLNPO's written disapproval. If after good faith consultation, GLNPO and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation in instituting the eminent domain proceeding. If after the good faith consultation, GLNPO and the Non-Federal Sponsor cannot agree on an appropriate amount, the Non-Federal Sponsor may use the amount in its appraisal as the estimate of just compensation in instituting the eminent domain proceeding.

iii. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted according to this Paragraph, fair market value shall be either the amount of the court award for the real property interests taken to the extent GLNPO determined such interests are necessary for constructing, operating, or maintaining the general navigation features, or the amount of any stipulated settlement or portion thereof that GLNPO approves in writing.

#### ARTICLE V - PROJECT COORDINATION TEAM

14. To provide for consistent and effective communication, the Non-Federal Sponsor, MDEQ and GLNPO, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. The Project Coordination Team shall meet regularly until the end of the Project Period. GLNPO's Project Coordinator, named in Paragraph 43, and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

15. GLNPO's Project Coordinator and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of construction progress and significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

16. Until construction completion, the Project Coordination Team shall generally oversee the Project including, but not necessarily limited to, matters related to design; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; GLNPO's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operating and maintaining the general navigation features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of Project schedules.

17. The Project Coordination Team may make recommendations to the GLNPO Project Coordinator on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. GLNPO in good faith shall consider the recommendations of the Project Coordination Team. GLNPO, having the legal authority and responsibility for constructing the Project, may accept or reject, in whole or in part, the Project Coordination Team's recommendations.

#### ARTICLE VI - METHOD OF FUNDING

18. As of the effective date of this Agreement, the Total Project Costs are projected at \$8,000,000, the MDEQ's fixed contribution to the project is \$600,000, and the Non-Federal Sponsor's contribution required under Paragraph 5 is projected at \$3,200,000 which includes the \$600,000 from MDEQ. The Total Project Costs and the Non-Federal Sponsor's share are subject to adjustment by GLNPO and the Non-Federal Sponsor, as provided in Paragraph 3.b. or 20 of this Agreement, if the project description needs to be amended in response to public comments that are received or for any other reason, and are not to be construed as the total financial responsibilities of GLNPO and the Non-Federal Sponsor if an Amendment to this Agreement is signed by GLNPO and the Non-Federal Sponsor that increases the Total Project Costs.

a. MDEQ will make its \$600,000 payment upon receipt of an invoice accompanied by documentation from GLNPO's contractor in an amount greater than or equal to \$600,000.

b. The original invoice, or letter, with supporting documentation, shall be sent to the first address listed below, with a copy to the second address:

Michigan Department of Environmental Quality

Remediation and Redevelopment Division  
Administration Section  
Attn: Kathryn Crawley  
P.O.Box 30426  
Lansing, MI 48909-7926

Michigan Department of Environmental Quality  
Remediation and Redevelopment Division  
Superfund Section  
Attn: Esther Bradsher  
P.O. Box 30426  
Lansing, MI 48909-7926

c. Within 45 days of receipt of an invoice with the appropriate supporting documentation, the MDEQ shall submit payment, made payable to the order of the “Treasurer, United States of America” to

Cincinnati Accounting Operations  
U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, PA 45251

d. The Check shall contain a notation referencing a Budget Organization account number that shall be provided by GLNPO later. The MDEQ shall provide documentation of the above payment to GLNPO to Marc Tuchman, pursuant to Paragraph 43 of the Notices Section, below.

19. The Non-Federal Sponsor shall provide In-kind contributions to the Project and cash payments to U.S. EPA as required by Paragraph 5 according to the provisions of this Paragraph. The Payments shall be made in the manner outlined in Paragraph 23 below.

a. The Non-Federal Sponsor shall submit an itemized statement listing the In-kind contributions it has incurred and anticipates incurring to complete the Project.

b. The Non-Federal Sponsor shall submit a payment in the amount of \$ 460,000 within 30 days after GLNPO executes this Agreement. This payment will be the first of three installment payments for the Non-Federal Sponsor’s share of the Total Project Costs

c. The Non-Federal Sponsor shall submit a second installment payment of \$1,560,000 on or before September 15, 2006.

d. The Non-Federal Sponsor shall submit a third installment payment to bring the total amount of the Non-Federal Sponsor’s contributions to the Total Project Costs plus the

\$600,000 contributed by MDNR to 40%, within 90 days after receiving written notice from GLNPO of the final accounting that is required under Paragraph 22.

20. If at any time GLNPO determines that the Total Project Costs will exceed the amount listed in Paragraph 18 and that the Non-Federal Sponsor's contribution are projected to exceed the amount listed in Paragraph 18, GLNPO shall notify the Non-Federal Sponsor in writing of the additional funds required and shall explain why they are required. Subject to Paragraph 3.b., GLNPO and the Non-Federal Sponsor must come to an agreement on the Project cost increases before continuing work. Once agreement has been reached and this Agreement has been amended, the Non-Federal Sponsor, shall pay 40% of the cost increase as specified in Paragraph 19 above.

21. Until GLNPO gives the Non-Federal Sponsor the results of the final accounting, GLNPO shall maintain current records of contributions provided by the Parties, current projections of the Total Project Costs, and costs due to additional work under Paragraph 5, 20, 13.d, or 22.

22. Upon completion of the Project or termination of this Agreement before Project completion and upon resolution of all relevant proceedings, claims, and appeals, GLNPO shall conduct a final accounting, based primarily on the information collected by the Non-Federal Sponsor pursuant to Paragraph 4, and give the Non-Federal Sponsor the final accounting results. GLNPO may perform an interim accounting on its own or, if requested by the Non-Federal Sponsor.

a. The final accounting shall determine the total costs of the Project, GLNPO's and the Non-Federal Sponsor's shares of the Project, and GLNPO's and the Non-Federal Sponsor's required share for the Project.

i. If the final accounting shows that the Non-Federal Sponsor's total contribution is less than its required share of the Total Project Costs, the Non-Federal Sponsor shall, within 90 calendar days after receipt of written notice, pay the amount necessary to meet its required share by delivering a check payable in the manner described in Paragraph 24, below.

ii. If the final accounting shows that the Non-Federal Sponsor's contribution exceeds its required share of the Total Project Costs, GLNPO shall, subject to the availability of funds and subject to appropriations, approve the refunding of the excess to the Non-Federal Sponsor within 90 calendar days after completing the final accounting.

23. The Non-Federal Sponsor shall submit a check, made payable to the order of the "Treasurer, United States of America," to

Cincinnati Accounting Operations  
U.S. Environmental Protection Agency  
P.O. Box 371099M

Pittsburgh, PA 15251

24. The check shall contain a notation referencing a Budget Organization account number that will be provided by GLNPO later. The Non-Federal Sponsor shall provide a copy of the check to GLNPO to the Marc Tuchman, pursuant to Paragraph 43 of the Notices Section, below

#### ARTICLE VII - DISPUTE RESOLUTION

25. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this article are the exclusive mechanism to resolve disputes arising under or with respect to this Agreement. This Article will apply to disputes involving some or all of the parties to this Agreement, including GLNPO, MDEQ and/or the Non-Federal Sponsor.

26. Any dispute which arises under or with respect to this Agreement shall initially be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 business days from the time the dispute arises, unless extended by written agreement of the Parties to the dispute. The informal dispute period arises when the party not in dispute receives the other Party's written notice of dispute.

27. Statements of Position.

a. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, the position advanced by GLNPO shall be binding unless, within 10 business days after the conclusion of the informal negotiations, the Non-Federal Sponsor invokes the formal dispute resolution procedures of this article by serving on GLNPO a written statement of position on the matter in dispute. The statement of position shall include, but is not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Non-Federal Sponsor.

b. Within 30 business days after receiving the Non-Federal Sponsor's statement of position, GLNPO shall serve on the Non-Federal Sponsor its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by GLNPO. Within 20 business days after receiving GLNPO's statement of position, the Non-Federal Sponsor may submit a reply.

c. GLNPO shall maintain an administrative record of the dispute that contains all statements of position, including supporting documentation, submitted pursuant to this paragraph. Where appropriate, GLNPO may allow submission of supplemental statements of position by the parties to the dispute.

d. The Director of GLNPO will issue a final administrative decision resolving the dispute based on the administrative record described above. This decision shall bind the Non-

Federal Sponsor, and/or MDEQ, subject to any opportunity for judicial review under applicable law.

#### ARTICLE VIII - OPERATION AND MAINTENANCE

28. Subject to applicable federal laws and regulations, the Non-Federal Sponsor, at no cost to GLNPO, shall operate and maintain the elements of the Project constructed pursuant to this Agreement in a manner compatible with the authorized purposes of the Project. The Non-Federal Sponsor shall be responsible for taking all actions necessary to undertake the operation and maintenance of the Project as set forth in the attached Project description.

29. The Non-Federal Sponsor authorizes GLNPO to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for the purpose of implementing or overseeing the Project. However, nothing in this Agreement, conveys to GLNPO any interest in real property owned or controlled by the Non-Federal Sponsor.

29. The Non-Federal Sponsor authorizes GLNPO or its agent to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsor to enable the disposal of dredged or excavated material that, in GLNPO's sole discretion, are necessary for operating, maintaining, or managing any element of the Project.

#### ARTICLE IX - SEVERABILITY CLAUSE

30. If a court issues an order that invalidates any provision of this Agreement, the Parties shall remain bound to comply with all provisions of this Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

31. GLNPO and the Non-Federal Sponsor shall provide information to the U.S. EPA Contractor, as requested, so that the U.S. EPA contractor can produce the required monthly reports and final Project audits.

#### ARTICLE XI - FEDERAL LAWS AND REGULATIONS

32. In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and GLNPO agree to comply with all applicable federal laws and regulations, including, but not limited to:

a. Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. § 2000d); and all applicable federal labor standards requirements including, but not limited to 40 U.S.C. §§ 3141-3148 and 40 U.S.C. §§ 3701-3708 (revising, codifying and enacting without substantive change);

- b. The provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a *et seq.*);
- c. The Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 *et seq.*), debarment and suspension requirements (40 C.F.R. Part 32);
- d. The Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c) and the Endangered Species Act (16 U.S.C. §§ 1534 to 1544);
- e. Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60-4 relating to federally-assisted construction contracts; and
- f. Any statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, non-federal sponsor shall undertake good faith efforts in compliance with 40 C.F.R. § 31.36(e) to give opportunities to qualified Small Business Enterprises (“SBE”), Minority Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. The Non-Federal Sponsor shall submit a report of such efforts in a manner acceptable to GLNPO.

#### ARTICLE XII - RELATIONSHIP OF PARTIES

33. In the exercise of their respective rights and obligations under this Agreement, GLNPO, MDEQ and the Non-Federal Sponsor each act in an independent capacity, and none is considered the officer, agent, or employee of the other two.

34. In the exercise of their rights and obligations under this Agreement, neither GLNPO nor the Non-Federal Sponsor party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights that GLNPO or the Non-Federal Sponsor may have to seek relief or redress against that contractor.

#### ARTICLE XIII - OFFICIALS NOT TO BENEFIT

35. No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE XIV - TERMINATION OR SUSPENSION

36. If the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Director of GLNPO shall terminate the Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States, or is necessary to satisfy agreements with any other non-federal interests in connection with the Project.

37. If GLNPO fails to fulfill its obligations under this Agreement, the Non-Federal

Sponsor shall terminate the Agreement or suspend future performance under this Agreement unless it determines that continuation of work on the Project is in the interest of the Non-Federal Sponsor, or is necessary to satisfy agreements with any other non-federal interests in connection with the Project.

38. If GLNPO does not receive annual appropriations sufficient to meet its share of scheduled expenditures for the Project for the then-current or upcoming fiscal year, GLNPO shall notify the other in writing, and either party may without penalty terminate the Agreement or suspend future performance under the Agreement. If either party suspends future performance pursuant to this Paragraph, the suspension shall remain in effect until GLNPO receives sufficient appropriations or until GLNPO or the Non-Federal Sponsor terminates the Agreement, whichever occurs first.

39. If either GLNPO or the Non-Federal Sponsor terminates this Agreement pursuant to this article, both GLNPO and the Non-Federal Sponsor shall conclude their activities relating to the Project and proceed to a final accounting pursuant to Paragraph 22.

40. Any termination of this Agreement or suspension of future performance under this Agreement shall not relieve the Parties of liability for any obligation previously incurred. Interest shall accrue on any delinquent payment owed by the Non-Federal Sponsor at a rate, to be determined by the Secretary of the Treasury, equal to 150 per cent of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately before the payment became delinquent, or auctioned immediately before the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

41. The Non-Federal Sponsor may terminate this Agreement by certifying to GLNPO that they have completed all tasks for which they are responsible in this Agreement, including the payment of their share of Total Project Costs as set forth in Paragraphs 19 and 22. This termination cannot occur until after the final accounting under Paragraph 22 has been completed. GLNPO shall have 90 business days to object to the termination of this Agreement. If GLNPO does not object within that time period, then this Agreement will terminate with no further action. If GLNPO does object within that time period, then the Parties must follow the dispute resolution requirements set forth in Article VII.

#### ARTICLE XV -HISTORIC PRESERVATION

42. The Non-Federal Sponsor shall evaluate the Project's impact on historic property. The costs of identification, survey and evaluation of historic properties shall be included in Total Project Costs and shared according to this Agreement.

#### ARTICLE XVI - NOTICES

43. Unless otherwise specified here, any notice, request, demand or other communication required or permitted between the parties under this Agreement shall be in writing and addressed as follows:

to the Non-Federal Sponsor: Dan Johnson  
Phelps Dodge Project Manager  
One North Central Avenue  
Phoenix, Arizona 85004  
(602) 366-8567

to the MDEQ: Bruce VanOtteren, Superfund  
Michigan Department of Environmental Quality  
Remediation and Redevelopment Division  
Constitution Hall - 3<sup>rd</sup> Floor South  
P.O. Box 30426  
Lansing, MI 48909

to GLNPO: Marc Tuchman  
GLNPO Project Manager  
77 W. Jackson Blvd.  
Chicago, IL 60604  
(312) 353-1369

and

Rosita Clarke-Moreno  
Superfund Project Manager  
77 W. Jackson Blvd.  
Chicago, IL 60604  
(312) 886-7251

44. Either party may change its notice address provided in Paragraph 43 by written notice to the other Parties.

45. The addressee shall be deemed to have received any notice given pursuant to this Agreement at the earlier of the date it is actually received, or seven calendar days after it is mailed.

#### ARTICLE XVII - CONFIDENTIALITY

46. To the extent permitted by the laws governing each Party, the Parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing Party.

ARTICLE XVIII -RESPONSIBLE PARTIES

47. If it is discovered through any investigation for hazardous substances or other means that CERCLA, RCRA, or TSCA liability for hazardous substances addressed by the Project can be attributed to a responsible party, the Non-Federal Sponsor, MDEQ and the GLNPO shall provide prompt written notice to each other. The Non-Federal Sponsor, MDEQ and the GLNPO shall consult according to Article V in an effort to ensure that responsible parties bear their fair share of clean up and response costs. Implementation of the Project shall not relieve any third party from any liability that may arise under CERCLA, RCRA, or TSCA.

ARTICLE XIX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

48. This Agreement does not create any rights, confer any benefits, or relieve any liability, for any third person not party to this Agreement.

ARTICLE XX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

49. No officer, agent, consultant, or employee of the Non-Federal Sponsor, MDEQ or of GLNPO, may be charged personally, or held liable, under this Agreement because of any breach, attempted breach, or alleged breach of the Agreement.

ARTICLE XXII - AUTHORITY OF SIGNATORY TO BIND

50. Each undersigned representative of the Non-Federal Sponsor, MDEQ and GLNPO certifies that he or she is fully authorized to enter into the terms of this Agreement and to execute and legally bind such Party to this Agreement.

51. This Agreement will become effective on the date the GLNPO representative signs the Agreement.

By:



\_\_\_\_\_  
Bharat Mathur  
Acting Great Lakes National Program Manager

Date: 7-11-06

Tannery Bay Sediment Remediation and Restoration Project Agreement  
Between U.S. EPA, MDEQ and Phelps Dodge Corporation

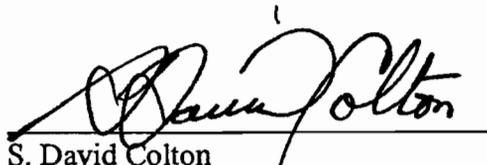
By: 

Steven Chester  
Director, Michigan Department of Environmental Quality

Date: 7-10-06

Tannery Bay Sediment Remediation and Restoration Project Agreement  
Between U.S. EPA, MDEQ and Phelps Dodge Corporation

By:



S. David Colton  
Senior Vice President and General Counsel  
Phelps Dodge Corporation

Date:

07/07/2006